THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 20473 of 2006

Dated: 28.09.2006

Between:

Md. Jani Miya, Conductor E.250233, S/o Mansoor Ali, aged about 42 years, R/o Nalgonda, Nalgonda District.

.... PETITIONER

AND

The Commissioner, Disabled Welfare and State Commissioner under persons with Disabilities Act, 1995, Disabled Welfare Department, Govt. of A.P., 6th Floor, Chandravihar Buildings, Nampally, Hyderabad and others.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE N.V. RAMANA

Writ Petition No. 20473 of 2006

Order:

This writ petition is filed seeking a Mandamus declaring the action of respondent Nos.2 to 4 in not implementing the orders of respondent No.1-Commissioner, dated 25.04.2006, as illegal and arbitrary.

The petitioner, while working in A.P.S.R.T.C., was removed from service on 02.04.1993 on the ground of absenteeism, and on appeal against the said removal order, the appellate authority allowed the appeal, and directed his reinstatement into service. At the time of reinstatement, during medical examination, as the petitioner was found unfit to hold the post of Conductor on the ground of defective vision of left eye, the Depot Manager, Kodad, issued office order, dated 27.10.1997, retiring the petitioner from service with effect from 27.10.1997. Since, the respondents-Corporation has not provided any alternative employment as per the provisions of Section 47 of the Persons with Disabilities (equal opportunity, protection of rights, full participation) Act, 1995 (for short 'the Act'), the petitioner approached respondent No.1-Commissioner, who, by order dated 25.04.2006, directed the respondents-Corporation to provide suitable alternative job to the petitioner and implement the provisions of Section 47 of the Act. Thereafter, the petitioner filed a representation dated 12.05.2006 requesting respondent Nos.2 to 4 to comply the orders of respondent No.1-Commissioner, but so far no action thereon has been taken. Hence, he filed the present writ petition.

Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents-Corporation.

The facts are not in dispute. The petitioner, who was declared as medically unfit to hold the post of Conductor on the ground of defective vision of left eye, is entitled for alternative employment as per the provisions of Section 47 of the Act, and respondent No.1-Commissioner, by order dated 25.04.2006, also directed the respondents-Corporation to provide suitable alternative job to the petitioner and implement the provisions of Section 47 of the Act.

That apart, a Division Bench of this Court in ***N. Siva Kumar v. APSRTC, Musheerabad, Hyderabad***[1], considered similar issue and directed the authorities to consider the case of the employee in the light of the provisions of the Act for alternative employment. The relevant portion reads as under;

> "Having regard to the fact that a right has been conferred upon the appellant herein under a statute, although the question raised herein has not been raised before the learned single Judge, we, in modification of the order passed by the learned single Judge, direct the appellant herein to file a representation, if not already filed, before the appropriate authority seeking the relief prayed for in this appeal, and on receipt of such a representation, the appropriate authority may consider the case of the appellant in the light of the aforementioned provisions and the decisions referred to hereinbefore, and pass an appropriate order at an early date, preferably within a period of four (4) weeks from the date of communication of this order."

In that view of the matter, I deem it appropriate to dispose of the writ petition with the following direction.

The respondents-Corporation is directed to consider the representation, dated 12.05.2006, of the petitioner for providing alternative employment in lieu of his medical unfitness in the light of the orders of respondent No.1-Commissioner, dated 25.04.2006, and the judgment of the Division Bench of this Court, and pass appropriate orders thereon, expeditiously.

The writ petition is accordingly disposed of. No costs.

N.V. RAMANA, J.

Date: 28.09.2006
Nsr/lsl

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[1] 2001 (3) ALD 166 (DB)